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Class E336

Book 535

MR. BAYARD'S SPEECH,

UPON

HIS MOTION TO AMEND THE RESOLUTION

OFFERED BY MR. GILES,

BY STRICKING OUT THAT PART WHICH
IS IN ITALICS.

DELIVERED IN THE SENATE OF THE UNITED STATES,

TUESDAY, FEBRUARY 14, 1809.

MR. GILES' MOTION.

Resolved, That the several laws laying an embargo on all ships and vessels in the ports and harbors of the United States, be repealed on the 4th day of March next, *except as to Great Britain and France and their dependencies; and that provision be made by law for prohibiting all commercial intercourse with those nations and their dependencies, and the importation of any article into the United States, the growth, produce or manufacture of either of the said nations, or of the dominions of either of them.*"

IT will be perceived, Mr. President, by the motion which I have made to amend the resolution, offered by the honorable gentleman from Virginia, that I do not approve of the course which it seems the government have determined at length to pursue. The honorable gentleman has told us, it is not his plan, and I give him credit for the fairness and candor with which he has avowed the measures to which he would have resorted. He would have raised the embargo and declared war against England. Being opposed in this scheme, by a majority of his friends, his next proposition was to issue letters of marque and reprisal; finding however, that the other House had refused to go even so far, he had on the principle of concession and conciliation with his friends, agreed to take the course proposed in the resolution, in hopes that our vessels going upon the ocean and being captured under the orders in council, would drag the nation into a war; when he presumed the war being made upon us, we would agree to fight our enemy. Sir, it is upon this very ground, and considering this as its object, that I am opposed to the resolution. England is not our enemy, nor does a necessity exist to make her so. I am not going to deny that we

have many, and heavy complaints to make against her conduct, nor shall I contend that causes do not exist which might justify a war; but I mean to say that policy forbids the measure, and that honor does not require it.

The gentleman has painted in very glowing colors, the wrongs and insults which we have suffered from British violence; he has recorded in his catalogue the offensive acts of British agents, as well as the injurious pretensions and orders of the government. I mean not to defend nor even to palliate any aggression, public or private, against the rights or honor of our country; but, Sir, I cannot conceal my surprise, that this gentleman, so much alive to British wrongs, should be insensible to every thing which we have suffered from France. The gentleman has exhausted the language of terms of invective and reproach against the British government and nation, but he has been silent as the grave, as to the French. How can it be that what is wrong in Britain is right in France? And wherefore is it that the same acts of France are borne with patience, which proceeding from Britain, excite such a spirit of indignation. You have the orders of council to complain of, but have you not the decrees of his imperial majesty? We are told that the orders in council give us laws, regulate our commerce, and degrade us to the state of colonies; but do they contain more, or do they extend as far as the imperial decrees? Do they make us more the colonies of Britain, than the decrees make us the colonies of France? And we to invoke the spirit of liberty and patriotism to a resistance to Britain, while we are tamely yielding ourselves to French bondage? We are told of our vessels being *forced* into French ports and compelled to pay tribute; but nothing is said of our being *invited* into French harbors, and then seized and confiscated.

With all the complaints against the British orders, and the silence as to French decrees, ought we not to be surprised in discovering that the orders are exceeded in severity and injustice by the decrees? Let it be remembered that this system of outrage upon neutral rights originated on the part of France in the Berlin decree—that decree in effect, forbids neutrals to trade to England or her colonies, or to purchase, or to carry their manufactures or produce. In commencing this system, France justified its principle and compelled her adversary to retaliate by acts of the same injustice against neutrals who submitted to it. Tell me which we have first and most to blame, the one who set the example, or him who followed it?

It is a consideration also of great weight, that at the time when the Berlin decree issued, France was bound to the United States by a solemn treaty to permit the trade which that decree prohibits—a treaty, signed by Bonaparte himself, and expressly providing for the freedom and security of our commerce with his enemy, in the event of war: and if the orders in council are a violation of the law of nations, they are not like the French decrees, a breach of plighted faith. The orders leave to us the

direct colonial trade. Our intercourse is not interrupted with the colonies and dependencies of France; but the decrees interdict all neutral commerce with the colonies and dependencies of England, as well as with the mother country. Your very ships, which enter an English port, are denationalized, and are liable, after the lapse of any time, though performing a voyage otherwise innocent, to seizure and confiscation.

Another feature of injustice and iniquity distinguishes the decrees from the orders. By the orders, our merchants are surprised of the commerce which is interdicted. Full notice of the prohibition is allowed, before the property is exposed, by a transgression of the orders, to be confiscated or seized. No such forbearance can be discovered in the decrees, which are to be indiscriminately executed upon the innocent and the guilty; upon those who never heard, or could have heard of them in the same manner as upon those who knowingly violate them.

I hope, Sir, it will not be understood that I mean to defend the orders in council, or to advise this nation to submit to them; but I could wish to direct some portion of the warmth and indignation, which has been expressed against them, against those decrees which produced them, and which exceed them in iniquity and outrage.

The avowed object of the honorable gentleman from Virginia—is a war with England. On this subject I make but one question—Is it possible to avoid it with honor?

If this possibility exists, the war ought to be avoided. And it is my opinion that it does exist. To this opinion I am, in a great degree, led by a want of confidence in the sincerity of the disposition of our executive to settle our differences with Great Britain. Your measures have not been impartial as to the belligerents, and your negotiations have not been sincere as to England. The gentleman from Virginia has called this charge of insincerity a miserable vision. I believe, Sir, it is a miserable and melancholy fact—and if you will have patience with me, I will furnish proof enough to support the belief of the most incredulous.

I mean to shew, that your government has had it in its power to secure peace with Britain, by the settlement of the differences between the two nations, and that the means have not only been neglected, but means employed to prevent such a settlement from taking place.

It will be necessary for us to consider what those differences were.

They may be referred to three heads:—

1st. The rule, as it is called, of the war of 1756.

2d. Constructive blockades.

3d. Impressment of seamen on board of American merchant vessels.

I do not mean to say, that there were no other causes of complaint, arising from the indiscretions and insolence of British commanders; but they had not the character of national differences,

and would probably have soon ceased and been forgotten, if the points of controversy between the governments had been amicably arranged. To settle the differences, which I have stated, a negociation was opened in London in 1803, and carried on till December, 1806. It is remarkable, that while this negociation was depending and progressing, our government had recourse to a step in its nature calculated to repel, instead of to invite, the British government to a friendly settlement. In April, 1806, they pass a law prohibiting the importation of certain British goods. The acknowledged object of this law was to coerce Britain to agree to our own terms. Did this law evidence a disposition to be friendly upon our part, or was it calculated to inspire a friendly temper on the part of England?

It was fuel to the flame of discord. The British government is not less high spirited and proud than our own, and the attempt to force them to terms was the likeliest course which could have been pursued, by provoking retaliation to widen the breach between the two countries.

This measure enforced, when negociation was going on, and promised a favorable result, is no small proof in my mind that the executive was satisfied with the forms of negociation, but wanted no treaty with England.

I proceed to inquire whether our differences with Britain were not of a nature to be compromised; and if our government had been sincerely disposed, whether they might not have retained the relations of amity with that power.

First, as to the rule of 1756. This rule was founded on the principle, that a neutral nation could not acquire a right to trade by the cession of one belligerent in time of war which did not exist, but was withheld in time of peace. The rule was supported on the principle that a neutral could not come in aid of a belligerent and cover its property on the ocean, when it was incapable of protecting it itself.

I am not going to defend this rule, nor to inquire into its origin. Thus much I will say, that if it was the British rule of 1756, it was the express rule of the French maritime code in the years 1704 and 1744. I will not trouble you with reading the decrees of the French monarchs which I have on the table, made in the years mentioned, and which prohibit to neutrals any but a direct trade to the colony of an enemy. Though the rule of 1756 may not be an ancient rule, yet we must admit that it was not a new rule introduced in the present war and contrived to ruin or injure the American commerce.

France was unable to trade with her colonies; the United States became her carriers, and under our flag the manufactures of the mother country were safely carried to the colonies and the produce of the colonies transported to Europe. This trade was certainly as beneficial to France as profitable to the United States: Britain only was the sufferer, and the rule of 1756 was revived in order to take from French commerce the protection of a neutral.

flag. Our government were certainly right in claiming the free enjoyment of this profitable trade, but the only question is whether the neutral and belligerent pretension did not admit of adjustment by each side making an equal concession of points of interest.

The treaty of 1806, which the President rejected, fairly compromised the dispute on this subject. The 11th art. of that treaty secured to the United States the carrying trade of France and her colonies, subject to terms somewhat inconvenient to the merchant, but rendering it not less beneficial to the nation. The treaty requires that goods exported from France or her colonies in American vessels shall be entered and landed in the United States; and when exported from France through the United States to her colonies, shall be liable to a duty of one per cent. and from the colonies to France of two per cent. to be paid into our own treasury. This regulation of benefit to the government by the duty which it gave to it was of little prejudice to the trade, and there is no room to doubt that the trade, thus secured from the spoliations to which it was before subject, would have flourished beyond its former limits.

Our differences, therefore, as to the carrying trade so much harrassed by the British rule of 1756, not only admitted of compromise, but was actually settled by an arrangement in the treaty of 1806, with which the nation would have been perfectly satisfied.

The second head of dispute regards the practice of constructive blockade. The complaint on this subject was, that blockades were formed by proclamations, and that neutrals were compelled to consider ports as blockaded before which no force was stationed. That the principle of blockades was extended to unwarrantable limits, is most certainly true, and there is no question as to our having just cause to complain of the vexatious interruptions to which it exposed our trade. The present war between France and England is without a parallel between civilized nations; it is not a struggle for renown or for ordinary conquest, but on the part of Britain for her independence and existence. Principles of neutrality or of right have been little regarded upon the land or upon the ocean; and the question with the belligerents has been less what the law of nations permitted them to do, than what their strength enabled them to accomplish. It is unlawful for a neutral to attempt to enter a blockaded port—but a port cannot be considered as blockaded unless a force adequate to the end is stationed before it. The blockades therefore, which England created simply by a proclamation, were an abuse of which neutrals had just cause to complain.

The United States did complain, and these complaints were listened to by the British government. The 10th art. of the treaty of 1806, has made provision on the subject; and though England has not renounced the principle of which we complain, yet it is qualified by the notice which is required to be given to the vessel attempting to enter a blockaded port, before she is exposed to seizure and confiscation.. The provision in the treaty,

would no doubt have corrected in a considerable degree the abuse from which we had suffered, and it was our policy to have waited for better times for a completer remedy for the evil.

But, Sir, the last head of dispute which I enumerated was made the chief and most important ground of complaint against the British government—I mean the searching American vessels for British seamen. The right claimed by England was to seize her own seamen on board our private vessels. The right to search a public vessel, or to seize an American sailor was never asserted by the government. The claim, however, which was insisted on, involved a point of equal interest and delicacy to both countries. There is nothing novel in the pretension, that a nation engaged in war had a right to recall her subjects from foreign countries or from foreign service to assist her in the war.

Every nation in Europe has claimed and exercised the right. Our government has not denied it; but the consequences of the manner of exercising it have formed the ground of our complaint. Has a belligerent a right to search a neutral vessel for her seamen? I should suppose not. This question between other nations is of small importance, between the United States and Britain, it is of great magnitude.

The sameness of manners, habits, language and appearance render it always difficult and sometimes impossible to distinguish between an English and an American sailor. If the right to search for British seamen were admitted, there would no longer be security for the American sailor: the right admitted, I have no doubt our navigation would be ruined. As an American therefore I would never concede the principle. Let us see however how the case stands in relation to Britain. Her navy is the shield of her salvation—whatever impairs its strength diminishes her power and safety. Tenacious as she has ever been of personal liberty at home, yet when men are wanted for her fleets, the habeas corpus sleeps. Her sailors are her right arm which withers as she is deprived of them. From the seductions of our maritime service she has every thing to dread. Our merchants can give her seamen a dollar for every shilling which she is able to afford them.

They shall be better fed, more gently treated, and exposed less to hardships and danger. Let them find a secure asylum on board our merchant ships, and how soon will the decks be thinned of the English ships of war. Which has the most at stake on this subject, England or America? I will not decide the question; but this is evident, that neither will ever unconditionally relinquish the principle for which she has contended. At the present crisis it was impossible for our government to expect the formal abandonment by the British government, of this right of search. What course then should they have pursued? They should have temporised on the point, as Britain was willing to do, and waited for a more propitious epoch, for the final arrangement of the dispute.

Your commissioners who negotiated the treaty, found that it was impracticable to obtain the cession of the principle for which

they contended, and upon their own responsibility, to their great honor, to preserve the peace of the two countries, accepted assurances from the British ministry, which, in their opinion, and I have no doubt in fact, would have effectually removed the abuses of which we complained. I beg pardon of the Senate for reading an extract from the letter of Messrs. Monroe and Pinkney, of the 3d of January, 1807, which contains the assurances to which I refer; "we are sorry to add, that this treaty contains no provision against the impressment of our seamen; our despatch of the 11th of November, communicated to you the result of our labors on that subject, and our opinion that although this government did not feel itself at liberty to relinquish formally by treaty, its claim to search our merchant vessels for British seamen, its practice would nevertheless *be essentially, if not completely abandoned*. That opinion has been since confirmed by frequent conferences on the subject with the British commissioners, who have repeatedly assured us, that in their judgment we were made as secure against the exercise of their pretensions, by the policy which their government had adopted in regard to that very delicate and important question, as we could have been made by treaty. It is proper to observe however, that the good effect of this disposition, and its continuance may depend in a great measure, on the means which may be taken by the Congress hereafter, to check desertions from the British service. If the treaty is ratified, and a perfect good understanding produced between the two nations, it will be easy for their governments by friendly communications, to state to each other what they respectively desire, and in that mode to arrange the business as satisfactorily as it could be done by treaty." Such was the footing upon which our commissioners were wisely disposed to leave this delicate affair. And would to God that our President wishing as sincerely as his friends profess for him, to accommodate the differences between the two countries, had as prudently agreed to the arrangement made for him by his ministers! What has been the consequence of this excessive anxiety to secure our seamen?—Why, that your service has lost more sailors in one year of embargo, than it would have lost in ten years of impressment.

But, Sir, in this lies the secret—a secret I will dare to pronounce. *Your President never meant to have a treaty with Great Britain*. If he had intended it he would have taken the treaty of the 31st of December, 1806. If he had intended it he would never have fettered the commissioners with sine qua nons which were insuperable.

It was an invariable article in the instructions, to form no treaty unless the claim to search merchant vessels for deserters was utterly abandoned; this was never expected, and at the arduous crisis at which it was insisted upon, it was impossible to expect it. And yet rather than temporize on the point, rather than accept the actual abandonment of the principle without its formal renunciation, a treaty, the work of years, negotiated by his favorite mi-

nister, and calculated to appease the animosities existing between the two nations, is rejected.

You will bear with me, Sir, while I say that this precipitate and fatal measure is the cause of all the embarrassments which we have felt, which we are feeling, and which we are likely to suffer; I ask, why was this treaty rejected? We are told for two reasons:

1st. Because it contained no engagement against the impressment of American seamen on board merchant vessels.

2d. Because of the collateral declaration of the British commissioners, that England retained the right to retaliate upon France the principles of her Berlin decree, if the United States should submit to its execution.

I have shewn from the public documents furnished to us by the President, the footing upon which our ministers placed the point of impressments.

Our commissioners considered the assurances given them by the British ministers, a better pledge for the safety of our seamen than a formal provision in the treaty. But if these assurances had even not been given, the treaty would not have compromised our rights or prejudiced our interests on the subject; in the mean time it would have induced more friendly relations and prepared both countries for such further concessions as their mutual interest might require. To me it is a matter both novel and surprising to discover in our President this strong and unyielding attachment to the highest points of our maritime rights. I had thought before, that he was not so friendly to our navy, to our merchants, and to our commerce.

I had thought that he would rather our ships were exchanged for farming utensils and our seamen converted into husbandmen. But now, Sir, it seems so highly does he value our navigation, that he prefers hazarding all the calamities of war rather than suffer one feather to be forcibly plucked from the wing of commerce.

Can any one believe that our government seriously intended to conclude a treaty with England, when our commissioners were instructed to make no treaty unless Britain formally consented, that our merchant flag should protect every deserter from her navy?

The insertion of this sine qua non in the instructions is sufficient to satisfy my mind, that there was no sincerity in the negotiation which was carried on with the British government.

We have been asked by the honorable gentleman from Virginia, (Mr. Giles) whether it can be imagined, that such men as King, Monroe and Pinkney would have colluded with the executive, or if they would not have borne evidence of his insincerity, if such had been the fact. Mr. King, he tells us, is a federalist to whom we have lately given proof of confidence and attachment. Mr. Monroe he represents of a disposition lately not to be guilty of concealment through affection for the administration, and Mr. Pinkney is said also to be a federalist.

All this the gentleman may take as true.—But Mr. King Sir, was never engaged in this negotiation—and as to Mr. Monroe

and Mr. Pinkney, I most clearly acquit them of any collusion with the President; because so far from colluding with him, they have *acted against* his secret and express instructions. Surely I have no reason to doubt the sincere disposition of these gentlemen, to make a treaty with England, when they concluded one under the responsibility of acting against their orders. No, my charge of insincerity against the executive is founded upon the documents a long time secret, now public, and upon the nature of the objections which have uniformly obstructed the adjustment of our differences with Britain.

The second impediment to the ratification of the treaty, was the declaration of lords Holland and Auckland which accompanied it. What did this paper impose upon us? Resistance to the Berlin decree: and will you permit me to ask, whether it was ever your intention to submit to that decree; you do not mean to submit to the orders in council, and does not the Berlin decree go to the extent of those orders? Are you better prepared, or more disposed to submit to France than to England? No, I hope we shall agree to fight before we consent that either of those powers shall give laws to the ocean.

I know at one time it was pretended, that the Berlin decree was designed only as a municipal regulation; municipal when it declared England and her dependencies in a state of blockade, and their manufactures and produce liable to capture. It is true that the minister of the United States in France, got some such explanation of the decree from the French minister of marine.—He did not consider it as derogating from the treaty of 1800, between France and the United States. But when the emperor is applied to, by the grand judge, his answer is “that since he had not thought proper to express any exception in his decree there is no ground to make any in the execution, with respect to any thing whatsoever.” When the minister of marine was applied to for his construction of the decree, he gave his opinion, but affected not to be the proper organ of communication on the subject. In this you see that craft and force were both united for the most destructive execution of the decree.

The decree was allowed to sleep for nearly a year—a public minister delivers his opinion that it was not to infract our treaty—and, after our property, to an immense amount, is allured by these deceitful appearances into French ports, his imperial majesty declares, in effect, through his minister of justice, that the treaty with the United States was not expressed as an exception in the decree, and therefore its provisions were to form no obstruction to its execution. So, Sir, we have probably lost some millions of dollars by our anxiety to consider this decree as a municipal regulation. Suppose, however, it had not designed what its terms so plainly express,—the blockade of the British isles.—In such case, what embarrassment would our government have incurred by agreeing to the proposition of the English commissioners, to resist the decree if executed against our neutral rights? If France had confined the execution of the decree to her own ports, Britain could not have complained of the execution of her

own law, within her own jurisdiction, and we should have had nothing to which we were to oppose resistance. But suppose the decree had been executed on the ocean, and you had become bound to oppose its execution by force—would your undertaking have been greater than the offer you lately made to England, in case she would repeal her orders in council?

I shall hereafter have occasion to view this subject in another point of light; but at present I ask, did not Mr. Pinkney mean to tell Mr. Canning, under his instructions from the President, that if Great Britain would repeal her orders in council, the United States would resist the execution of the French decrees?—This is stated in the letter of Mr. Canning to Mr. Pinkney, of the 23d of August, 1808, and admitted, as it is not denied, in the letter of Mr. Pinkney to Mr. Canning of the 8th of October, in the same year. Your government, then, would now agree to the terms which they so indignantly repelled when first proposed to them, and on the ground of which, in part, they refused the treaty which their ministers had negociated. It would seem then that no other material ground remains for the rejection of the treaty, than the want of a formal clause to secure our merchant seamen against impressment.

Is it your intention ever to have a treaty with Britain, or are the nations always to continue in a state of strife and contention? You were offered the treaty of 1794, and you refused it. Messrs. Monroe and Pinkney negotiate a treaty in 1806. The President rejects it, and insists on a point in the most obnoxious form, which he knows will never be conceded, and without the concession of which, no treaty is ever to be made. Does all this look like a sincere disposition to adjust our differences with England?

It is of importance, Mr. President, to consider, in the late negociation, who were the men in power in the respective countries. Can our President expect ever to see an English administration more disposed to treat upon favorable terms with this country, than the *Fox* administration? The name of Fox is the most grateful English name that is known to an American ear. From my childhood I have heard that Fox was the friend of America. He was the early champion of our rights, when Britain first attempted to deprive us of them. His voice was always raised in our favor, in opposition to the power of the crown. Fox was at the head of the ancient whig interest of England, and a firm supporter of the principles of freedom. He was, too, a philanthropist, and deemed in sentiment, by some, a citizen of the world. He was additionally, Sir, a French citizen, as well as our worthy President.

I hope it will not be thought that I mention with any invidious view, this last circumstance—I state it only for the material purpose of shewing the community of character between these great men, which recommended them to the fraternization of the French people. If Mr. Jefferson was not willing to accept the treaty which Mr. Fox offered him, from what administration in England can he ever expect a better? And may I not ask also if he can look to other men in the United States in whom he will have more

confidence, for their skill and integrity, than in those whom he employed in the late negotiation. We have all heard that Mr. Monroe was his early and bosom friend, and we have all seen that he has been his favorite minister.

Let us also not forget the time when the treaty was concluded—no time could have been more propitious ; it was at the moment when England was sinking under the triumphs of her adversary. Bonaparte had just broken to pieces the power of Prussia, driven the Russians to their frontier, and converted their emperor from an enemy into an ally. If you are not satisfied with the terms which England was willing to grant you at a moment of depression, can you look for better when she has less to fear from your enmity, or to hope from your friendship?

You find, Sir, that your President was favored by every circumstance in the negotiation of the treaty which he finally rejected.

It is not a little remarkable that he should have undertaken to reject this treaty without consulting the Senate, his constitutional advisers. He was in possession of a copy of the treaty while the Senate were in session—they were not allowed to see it: he would not trust their opinions upon it. They might have approved it ; and the responsibility would have been still greater to have rejected it after they had agreed to it. You will pardon me for speaking plainly—it is my duty to express my conviction, though I may happen to be wrong.

To me it has always appeared that your President was taken by surprize when he found a British treaty laid at his door. His instructions to his ministers precluded the possibility of a treaty, and it never entered his head that they would have been daring enough to conclude a treaty against his orders. But the ministers having obtained what they considered the substance, disregarded the form, and sent a treaty as little looked for, as desired.

I do not mean to contend that the President was bound to lay this treaty before the Senate, but in exercising the power to reject it without their advice, he took upon himself a great responsibility, and is answerable for all the consequences of an act exclusively his own. To this act, in my opinion, may be attributed the present embarrassments of your country. Had the treaty been accepted, our trade would have flourished as heretofore, and with it our agriculture, manufactures, and the fisheries. But it pleased our chief magistrate to reject it, and every day has since added to the gloom which has spread over our country.

In this condition was the state of our affairs when an unexpected event occurred, calculated to inflame to the highest pitch the animosity of our citizens against the British government. I allude to the attack of the Leopard upon the Chesapeake, in June, 1807. In relation to this outrage the people of America felt but one sentiment. A more wanton, flagitious, and perfidious act was never perpetrated. It is an act which America never will nor ought to forgive, till it is expiated by adequate satisfaction. But still, Sir, we must restrain our indignation while we inquire whose act it was, and who is answerable for it. The material inquiry is, was it or has it become the act of the British government?

The British minister, as soon as the news of the occurrence reached him, voluntarily and unasked, declared that it was unauthorised by the government. He disavowed it in parliament, and the king himself confirmed the disavowal.

It rested then as the act of admiral Berkeley. The nation however were bound to make us satisfaction for the injury done us by their public servant. If they refuse adequate satisfaction they adopt the act. The government were sensible of this obligation and they took steps to comply with it. They sent a special minister for the sole purpose of making reparation for the injury we had suffered. This minister we received, and agreed to consider the outrage which had been committed, as the act of Berkeley. Considered as the act of the government, it would have been an act of open war. You commence a negotiation as to the terms of reparation; but here the same spirit which rejected the treaty, baffles every effort to accommodate this new cause of offence.

When informed of the attack upon one of our public vessels by a British man of war under the orders of an admiral, our government had reason to apprehend that no individual; however high in rank, would have hazarded so daring an outrage without the authority of his government.

With this view, and to preserve peace and tranquillity in our harbours, we may consider the President as justified in issuing his proclamation, interdicting the entrance of British armed ships into the waters of the United States. But, Sir, the moment it was ascertained that the act of Berkeley was unauthorised; so soon as the government had solemnly disavowed it and offered reparation, the proclamation ought to have been withdrawn. Are you permitted to punish a nation for the acts of its subjects in which it does not participate? The law and the practice of civilized nations on this point is explicit and uniform. When the subject of one power offends against the sovereignty of another, this will not justify retaliation upon other subjects of the same power with the one who offended. It has uniformly been our own doctrine, and it is the common interest of mankind to maintain it, that in such case you must apply to the sovereign of the party offending, and abstain from any act of hostility till he refuses you reparation. This course our government did not pursue; for the act of an individual they retaliated against his nation.

Upon the grounds which have been stated, you may excuse the issuing of the proclamation; but what excuse is there for its continuance, when we acknowledge ourselves, in treating for reparation, that the act complained of is the act of an individual, and not of his government?

A proclamation like the one issued, without adequate cause, was a breach of neutrality, and a just cause of war. For to admit into your ports and grant succour to the armed ships of one belligerent, while you exclude those of the other, is not consistent with that impartiality which belligerents are entitled to claim from neutrals. The point was so understood, and so felt by the British government—and they required, as they had a right to do, that as they had not committed the act complained of, that the proclamation

which had an operation or appearance of hostility against them, should be recalled. If they refused reparation, we had a right to redress ourselves—but had we a right to take the redress into our own hands, and at the same time to require them to make us reparation? When you ask justice, you must expect to do it. A nation should be as ready to perform its duties, as to insist upon its rights. The British government had given sufficient evidence of a disposition to grant satisfaction for the injury done us, by sending to the country a special minister for the purpose;—that minister was instructed to make voluntary reparation, but to grant none under the coercion of the proclamation. In his first communication to the secretary of state, he informed him that his powers did not allow him to make reparation, unless the proclamation was withdrawn. The affair was then managed with sufficient adroitness to catch the popularity of the country, when it was known that the proclamation must be first withdrawn, its revocation and the reparation, were proposed by the secretary as simultaneous acts. Why was this proclamation so tenaciously insisted on? If you had revoked it, and the reparation offered was deemed insufficient, you would have had no difficulty in renewing it. It is no task to our President to issue a proclamation: at most, we contend only for a point of etiquette, a thing important perhaps in a monarchy, but very little respected among us republicans. Give me leave to say, that in this negotiation, I soon became persuaded that the difference in question, was not to be settled by itself, but was to stand open in the general account. If there had been a sincere desire to settle it, the paltry measure of the proclamation would not have formed an obstacle for a moment.

I have here a new and great proof that the executive is not sincerely desirous of a full and friendly settlement of all differences with England. It may be difficult to trace the motive which governs—but I can plainly discover the same spirit now, which agitated the nation in 1795:—a spirit then subdued by the mighty influence of Washington, but which has since risen with increased strength, and now dominates.

I consider, Sir, that the measures of the administration have been not only insincere, but extremely feeble; they will not settle their differences with England, and yet have not courage openly to quarrel with her; they pass a non-importation act to punish the impressment of seamen and the aggressions upon our carrying trade; they exclude by proclamation, British armed ships from our waters, to avenge the outrage on the Chesapeake: and what benefit to ourselves or detriment to our adversary have these measures produced? They are calculated to increase the animosity between the nations, but I know of no other effect they can produce. So far, indeed, have they been from constraining Britain to accede to our terms, that they have rendered her more regardless of our rights and interests. She has since given us new and more feeling causes of complaint, by her orders in council of the 7th of January, and the 11th of November, 1807. These orders take from us the trade of nearly all Europe. They are the counterpart of the French decrees. God forbid that I should justify

them ! I will never admit that France or England have a right to make laws for the ocean : nor shall I ever hesitate, when they insist upon the execution of such laws, to declare myself for war. I am as free as any gentleman in this Senate to protest against submission to the decrees of France, or the orders of England ; but is not submission to the decrees as disgraceful as submission to the orders ? The gentleman from Virginia said nothing of the decrees,—nothing of a war with France—his resentment was confined to Britain.

We have, Sir, to choose our enemy between these two nations. We are hardly equal to a contention against both at the same time.

How does the case stand in relation to them?—The emperor first issues his Berlin decree, interdicting our trade to England and her colonies. England then gave us notice, if you allow France to prevent your trading with us, we will not suffer you to trade with France. If you are tame enough to submit to a French decree, you will surely not be too proud to yield to a British order. Assure us that you will resist the execution of the decree, and we will not retort its principles upon you. This our government declined doing, and left England to pursue her own course. Her government then issues the order of the 11th of November, retaliating the Berlin decree. I do not defend this order ; but if the administration had resisted, as they ought to have done, the Berlin decree, we should not have seen the order. What now is to be done ? England insists on her orders, as a measure of retaliation against France. Prevail on France to repeal her decrees, or agree to resist the execution of them ; and if England then executes her orders, I will be as free as any man to go to war with her.

No such course has been taken, but what have we done ? *Laid an embargo.* And for what purpose did we lay the embargo ? This is a subject of conjecture to some ; but our government tells us, it was to preserve our ships, our sailors, and our mercantile capital. Some have said to preserve them from the operation of the orders in council. When the embargo was laid the orders in council were not known in this country.

Of this fact I want no stronger proof, no stronger can exist, than that the President in his message to Congress, in which he recommends the embargo, says not a word of these orders in council. No, the embargo was not produced by the orders in council, nor by any thing which we heard from England, but by news which had then been recently received from France.

We are told the embargo was to save our ships, our sailors, and mercantile capital. I do not believe that such was its object, but if such were its purpose, we have been miserably disappointed. The embargo for a short period, might have been a prudent measure. As a step of precaution, to collect our seamen and mercantile capital, I should never have complained of it. But it is insulting to common sense, to propose it as a scheme of permanent security, as it must daily consume, and finally annihilate the objects of its preservation. Your ships once in, and the danger known,

you should have left your merchants to their own discretion. They would have calculated the profits and the perils, and been determined by the balance of the account. No class of society is more capable of taking care of itself.

It is said we have preserved our seamen. The President has as gravely repeated this remark in his message, as he recommended to us to devise means to dispose of our surplus revenue, at a moment when it was evident that the situation of the country would drain the treasury of its last dollar.

Where are your sailors? They are not to be seen in your ports. One half that were employed by you have passed into foreign service, and many that remain, are to be found begging in your roads and at your doors.

As to our ships and mercantile capital, the one tenth part of the loss from decay and waste and want of employment, would have paid for an insurance against every danger to which they would have been exposed. It is not my intention, Mr. President, to detain you with any details on this subject, as I should be compelled to repeat the same things which have been stated by other gentlemen on a former occasion. But there are some general views of the subject not undeserving of notice, which yet remain to be taken.

If the embargo were ever a measure of precaution it certainly has long lost that character. As a measure of coercion, it was hopeless unless completely executed. If the party to be coerced was partially supplied, the object was defeated.

Now I ask you, Sir, if your government ought not to have been acquainted with its own powers, its own people, and its own situation well enough to have known that it was impossible for it to confine the whole produce of the country within its limits for any length of time? Ought they not to have foreseen the vast temptations which have arisen and presented themselves, as well to our own citizens as to foreigners, to combine in order to break or elude your laws? Ought they not to have known that with our extent of coast and frontiers, with our numerous waters, that a wretched gun boat navy, aided even by ten thousand regulars, were not capable of covering our borders and shutting up the numberless outlets of the country? Could they expect that patriotism was to feed and to clothe the people of the north; or that thousands would submit to starve in order to contribute to the success of an experiment?

We all know that the opposition to the embargo in the eastern states is not the opposition of a political party, or of a few discontented men, but the resistance of the people to a measure which they feel as oppressive and regard as ruinous. The people of this country are not to be governed by force, but by affection and confidence. It is for them we legislate, and if they do not like our laws, it is our duty to repeal them.

It is madness to talk of forcing submission when there is general dissatisfaction. Your government is in the hands of the people—it has no force but what it derives from them; and your enforcing laws are dead letters when they have once been driven to resist your measures.

It would, Sir, be some consolation, amidst the sufferings which this miserable system has caused, if in looking abroad, we could discover that the nations who have injured and offended us felt its oppression only equally with ourselves. But when we find that we have been scourging ourselves for their benefit and amusement, when they can tell us with indifference and contempt, that they feel for us, but that we must correct our own folly; instead of meeting with the poor comfort which we expected, we are overwhelmed with accumulated mortification.

Was this a measure against France? No—the emperor commends the magnanimous sacrifice which you have made of your commerce, rather than submit to British tyranny on the ocean.

His imperial majesty never approves what he does not like—and he never likes what does not comport with his own designs.

I consider it as admitted that the embargo was intended to coerce England; and the gentleman from Virginia now contends that if it had been strictly executed it would have had that effect. Nothing has happened that common foresight might not have foreseen. The gentleman has read to you, extracts from an English pamphlet, published before the embargo was laid, which predicts the very evasions of the law, the discontents it would produce, and the opposition it would meet with, which we have all had the melancholy opportunity of witnessing. I know the pamphlet was referred to for another purpose—to shew that British gold or influence had corrupted or seduced the Vermontese before the embargo was imposed. The gentleman may believe the fact to be so if he pleases; but I say, Sir, that your government here, with all its means of information, ought to have known as much about the condition of Vermont as a pamphletteer on the other side of the Atlantic.

It seems now to be admitted, and the fact is too evident to be denied, that the embargo has failed in its coercive effect upon Britain. The want of bread, cotton, or lumber, has neither starved her subjects, nor excited them to insurrection. Some gentlemen have had shrewdness enough to discover an effect in an English price current, which might to be sure, have been owing to the embargo, or might have been produced by the operation on the market of *some private speculations*. But it has enriched Canada, and has taught the islands their policy and ability to live without us.

Would to God, Mr. President, that the embargo had done as little evil to ourselves as it has done to foreign nations!

It is ourselves who are the victims of the miserable experiment. Your treasury will lose at least fifteen millions of dollars, and your country in addition not less than forty. This tax has not been so much felt, though it has not in truth been less paid, because the embargo has not taken the money out of our pockets, but only prevented it going into them. This measure has been not only ruinous to our interests, but it is hostile to the genius of our government. It calls for an increase of your regular army, and a vast augmentation of your military force. Ten thousand bayonets were not sufficient to enforce it, but fifty thousand volunteers (as I have seen by a bill on the table) were to be invited to assist in its execution.

That measure of an administration which arms citizen against citizen, or requires the soldier to act against the citizen, is baneful to liberty. If persevered in, there would soon be an end of free government.

The effect is also to be deplored, upon the spirit of your military. They are called upon to execute laws they are unable to construe, and in obeying their orders are exposed to the commission of murder.

Your naval forces are sent out to cruise, not for enemies, but for defenceless fellow citizens, and they return to boast not of a gallant battle, but of a miserable seizure which may bring poverty upon some wretched family in their own country.

It has been often said in defence of the embargo, that the nation had nothing left but that measure, submission or war. Can you distinguish between the embargo and submission? Can you pretend to say that it is a *voluntary self-restriction* imposed as a matter of choice? Can it be denied that it has been forced upon us by the conduct of one or of both of the belligerents? And with a full knowledge of the fact, can you describe it as any thing but vile abject submission? France tells you, you shall not trade to Britain, you obey her—Britain then tells you, you shall not trade to France, you submit. You have not resisted the decrees or orders, but have complied with the object of both. We have borne the burthen of the embargo till it has almost broke our backs, and even when we are sinking under it, we pretend to say, it was no task to bear it. In this case it is then said, there only remained submission or war.—Submission I put out of the case. I trust in God it never entered into the head of one American! But I deny that war is necessarily the alternative; and I never will admit it, till I see sincere efforts made to accommodate our differences with England. The President in his message at the opening of Congress, would give us the impression that Britain had refused the last and the fairest offer it was in the power of our government to make, in order to preserve peace. It will be important for us to understand the nature and extent of that offer. The proposition no doubt was made by Mr. Pinkney, in conformity to his instructions. To avoid error, I will take the liberty of reading to the Senate the words of Mr. Pinkney to Mr. Canning on the subject, in his letter of the 23d of August last:—

“I had the honor to state to you, Sir, that it was the *intention* of the President, in case Great Britain repealed her orders, as regarded the United States, to exercise the power vested in him by the act of the last session of Congress, entitled “An act to authorise the President of the United States under certain conditions, to suspend the operation of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several supplementary acts thereto.” by suspending the embargo law and its supplements as regards Great Britain. I am authorised to give you this assurance in the most formal manner.”

Now, Sir, what is the amount of this boasted offer? Nothing more than the assurance of our minister of an *intention* of the President to remove the embargo in case the orders in council were *actually* repealed. Great B. was to repeal her orders, allow the President

to make the most of that act with her enemy and trust to his executing his good intention when it should suit his good pleasure. The offer to England related only to the embargo, when this experimental measure so far from being injurious to her, was adding to her wealth and strength. It leaves her navigation without a rival on the ocean, and has restored to her more seamen, than she could have impressed in ten years. Well may Mr. Canning say, there is no assignable relation, between the removal of the embargo, and the repeal of the orders in council.

The President had instructed his minister to assure the British government, that the embargo was designed solely as a municipal regulation, and not as an act in any degree hostile to them.

The orders in council were a measure of hostility against France ; and we offer to revoke a municipal regulation operating in favor of Britain, if she will relieve us from the pressure of a measure adopted against her enemy. But let me ask was there any offer made to rescind the proclamation or to repeal the non-importation law? Two measures much more offensive and hostile to Great Britain, than the embargo. With these laws in force, it was a mere mockery to offer the removal of the embargo. What more proof do we want, than this transaction affords, that the executive has not been sincere in his endeavors to restore a good understanding between this country and England. And therefore it is that I contend that war is not unavoidable with that nation. I confess Sir I should think a war with England, one of the greatest evils which could befall this country, not only from the sufferings which it would inflict upon it ; but also from the fatal connexion with France to which it would give birth.

We have seen what has been the course of the government in relation to Britain ; and I will beg a few moments to examine what has been its conduct in regard to France? The last proposition made to Britain is well known—the documents fully disclose it ; but what at the same time was proposed to the French government? This we know little of. We have not been furnished with the correspondence with that government, on the subject. The transaction is covered with a dark and impenetrable veil. The President tells us in his message that the same proposals were not made to the two belligerents, and it would seem from what he hints, that the offer to France in case she repealed her decrees, was to join her in the war against England. It cannot be denied, that we have lost more by the spoliations, and have been more harrassed under the arbitrary edicts of France, than of England. By the treaty of 1800, we gave up more than twenty millions of dollars which had been seized, and against all right, confiscated in France. Since that time we are officially informed, that an amount nearly equal has been seized, and confiscated or sequestered. She has wondrously burnt our ships on the ocean and made no compensation. Her Berlin decree of the 21st of Nov. 1806, commenced the present system of outrage upon neutral rights. In effect it interdicts all trade with England and her colonies. This is followed by the Milan decree of the 17th of December, 1807. Under this edict an American vessel which has been searched, or visited against her

will, by a British cruizer or is proceeding to, or returning from England is liable to be captured as good prize. And finally, to complete this monstrous system, comes the Bayonne decree, the 17th of April, 1808, which declares every American vessel found upon the ocean, liable to seizure and confiscation. Opposed to these accumulated violations of our neutral rights, what steps has our government taken against France? Have they passed a non-importation act, issued a proclamation, or imposed an embargo? The last measure is general in its terms, but is avowedly against England alone. No, they have contented themselves with memorializing, remonstrating, and protesting. Against England we took every step short of war. against France we have employed nothing but gentle words. Has your government then shewn an equal resentment against the wrongs suffered from these two powers?

It may be from the habit of enduring; but we do not feel an aggression from France with the same quickness and sensibility that we do from England. Let us see, Sir, the same conduct observed with regard to both belligerents; let us see the impediments to a friendly settlement with Britain removed; let us witness a sincere effort made, to regulate the intercourse of the two nations by a treaty formed on principles of mutual concession, and equal interest and I will answer for it, if Great Britain persists in her orders, that you will find no division in this country on the question whether we shall submit to them or resist their execution.

Permit me, Mr. President, to detain you a few moments longer. I am sensible that I have already trespassed upon the indulgence of the Senate, and I shall hasten to conclude the remarks which I have thought it of importance to make upon the resolution which has been submitted.

The objects of the resolution are embargo, non-intercourse and non-importation as to England and France, and their colonies. The existing embargo is to be repealed only in part—one half of the channel of your rivers is opened, the other is to be embargoed; and vessels may proceed to sea, but they must not pass through the embargoed waters. I can well conceive if one port in the United States being embargoed and the others open; but of an embargo which gives the right to every vessel in a harbor to leave it, I confess I have no comprehension. I should have supposed that the honorable gentleman might have ventured to repeal the embargo generally, and trusted to the provisions on the subject of non-intercourse to accomplish what seems to be the object in view, in partially retaining it. Sir, it is a strange infatuation that the name of this odious measure should be preserved, when the thing itself is abandoned.

And what, Sir, are we to gain by a non-intercourse? It can never benefit the nation—it is nothing more than a part of that miserable musquito system, which is to sting and irritate England into acts of hostility. I have no doubt she sees the object, and she will take care not to give us the advantage which would be derived from war being commenced on her part. But I ask what will be the effect of non-intercourse? I see no other than that it

will require two voyages instead of one to transport our produce to the markets of the interdicted countries. You carry your merchandise to Lisbon, and there deposit it; and from thence it is carried in foreign ships to England and France. Who will pay the expense of this circuit of transportation? The United States. It will be deducted from the price of your produce. Can the gentleman contrive no system which will operate with less severity upon ourselves than upon those whom he deems our enemies? If the resolution has no design, but what is apparent on the face of it, it is evident that its sole operation is against ourselves. Its inevitable effect will be to reduce the profit of what we have to sell, and to increase the expense of what we have to purchase. I can perceive also, Sir, that it will be a measure of unequal pressure upon different sections of the country; and that its weight will fall heaviest upon that part of the union already too much galled to suffer any addition to its burthen. The lumber, the live stock, the fish, and the articles of common exportation to the eastward will not bear the expense of double freights. Will they thank you for repealing the embargo, and adopting a substitute which continues to shut the ports of the north while it opens those of the south. Will they thank you for a measure which deprives them even of the miserable consolation of having fellow sufferers in their distress. If this resolution be adopted you do nothing to heal the wounds which you have inflicted. If New England loses her trade she will derive no comfort from its being under a non-intercourse, and not under an embargo law.

It is a part of the resolution, that we are to import no produce or merchandise from England, or France, or their colonies. Do you expect, Sir, that a law to this effect could ever be executed, in time of peace? As to the manufactures of England she can make them the manufactures of any country in Europe; she will give you the exact marks, and stamps, and packages of any place to which your trade is open, and she will defy you to distinguish her fabrics from those they attempt to imitate. But, Sir, the consequence chiefly to be dreaded from such a measure, would be the practice of smuggling, to which it would certainly give birth. Can you expect in one moment to change the habits of a whole country? We know, Sir, the power of habit: it is a second nature. Can an act of Congress instantly change your nature?—No, Sir—they who can afford it, will have what they have been accustomed to. They will pay any price for articles, without which, perhaps, they can scarcely exist. Smuggling must follow—and will follow with forgery and perjury in its train. It is the honor and character of your trading people which now protects you from smuggling. Break down this sentiment, habituate them to perjury, destroy the disgrace attached to this violation of your law, and you lose half the security and means you have in the collection of your revenue.

The complaint has been made, that while we find fault with the measures proposed, we refuse to point out the course we would have the administration to pursue. I have, Sir, no hesitation on my part to disclose my opinion, or to offer the humble

assistance of my advice on the subject. In a few words I will tell you what I would do :—Place England and France upon the same footing, by repealing the non-importation act, rescinding the proclamation, and repealing the embargo. Then ask for, and insist upon adequate reparation for the affair of the Chesapeake. Make a treaty with Great Britain, if as good terms could be obtained as those in either of the treaties which have been refused.—Agree to resist the execution of the Berlin decree, and if she afterwards persisted in her orders in council, declare war against her. Such would be my course. War would be the last resort ; and I believe, in my conscience, we should never be driven to it, if the course were pursued with a sincere disposition to preserve peace.

Permit me, Sir, to notice one remark of the honorable gentleman from Virginia, which had escaped me, and I am done. The gentleman told us, that the removal of the embargo was designed as a concession to our eastern brethren. I rejoiced to hear this sentiment of forbearance. Such sentiments give hopes that the union may still be preserved. We have been led to the brink of a tremendous precipice—another false step, and we shall be lost in the abyss. Our safety is in treading back our steps. We have lost our way. Some ignis fatuus has beguiled us. There is a path of safety and honor—the path the nation once trod. Let us endeavor to regain it, and invoke the spirit of Washington to lead us once more into it !

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